FILED
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1975

No. 76-5306

ERNEST JOHN DOBBERT, JR.,

Petitioner,

vs.

STATE OF FLORIDA,

Respondent.

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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OPINION BELOW

The opinion below is adequately set out in the Petition.

JURISDICTION

For the reasons set out in this brief, Respondent submits that there is no substantial federal question in this case, so that this Court is without jurisdiction.

QUESTION PRESENTED

I. WHETHER THE IMPOSITION OF THE DEATH PENALTY AS TO THIS PETITIONER, PURSUANT TO A FLORIDA STATUTE PASSED SUBSEQUENTLY TO THE DATE OF THE ALLEGED OFFENSE FOR WHICH THE PETITIONER WAS CONVICTED, WAS A VIOLATION OF THE CONSTITUTIONAL PROHIBITION AGAINST EX POST FACTO LAWS AND A DENIAL OF EQUAL PROTECTION OF THE LAWS.

II. WHETHER THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING THE PETITIONER'S TRIAL SHOWS INHERENT PREJUDICE IN THE PRE-TRIAL SETTING AND JURY SELECTION PROCESS TO THE EXTENT THAT THE PETITIONER WAS DENIED DUE PROCESS OF LAW.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions and statutes involved are adequately set out in the Petition.

STATEMENT OF THE CASE AND FACTS

Respondent cannot agree that there were three dissenting opinions. Justice Overton concurred in both the judgment and sentence (328 So.2d at 444).

Respondent would augment Petitioner's factual recitation by reference to the facts found by the trial Judge:

> "'The evidence and testimony showed premeditated and continuous torture, brutality, sadism and unspeakable horrors committed against all of the children over a period of time. The crimes were committed against the children constantly and it is difficult to separate the specific acts against the individual child. What was done to one--short of causing blindness and murder--was done to all. However, the Court has set forth below some of the cruel and brutal acts against Kelly Ann--. in so far as trial notes and memory of testimony serve me correctly.
>
> "'Over the period of time of the later portion of Kelly Ann's short, tortuous life the defendant did these things to her on one or many occasions:
>
> 1. Beat her in the head until it was swollen.
>
> 2. Burned her hands.
>
> 3. Poked his fingers in her eyes.
>
> 4. Beat her in the abodmen until 'it was swollen like she was pregnant.'

5. Knocked her against a wall and 'when she fell, kicked her in the lower part of the body.'

6. Held her under water in both the bath tub and toilet.

7. Kicked her against a table which cut her head--then defendant sewed up her wound with needle and thread.

8. Scarred her head and body by beating her with a belt and board-- causing marks from her cheek, across the neck and down her back--which injuries worsened without treatment 'until the body juices came out'.

9. On one occasion beat her continuously for 45 minutes.

10. On many occasions kicked her in the stomach with his shoes on, and on the night she died he kicked her a number of times.

11. Kept her out of school so that the many scars, cuts and bruises on her body would not be seen by others.

12. Defendant made no effort to get professional medical care and attention for the child and in fact actively prevented any outsiders from discovering her condition.

13. Choked her on the night she died and when she stopped breathing he placed her body in a plastic garbage bag and buried her in an unmarked and unknown grave.'" at 437-38

The trial Judge aptly concluded:

> "'I am not easily shocked or affected by tragedy or cruelty--but this murder of a helplessdefenseless and innocent child is the most cruel, atrocious, and heinous crime I have every[sic] personally known of--and it is deserving of no sentence but death.'" at 441

With regard to voir dire, the Supreme Court found:

> "* * * As further evidenced by the record, seventy-eight prospective jurors were interviewed; allowed thirty-two peremptory challenges, the defense only exercised twenty-seven* * *." at 440

THE IMPOSITION OF THE DEATH PENALTY AS TO THIS PETITIONER, PURSUANT TO A FLORIDA STATUTE PASSED SUBSEQUENTLY TO THE DATE OF THE ALLEGED OFFENSE FOR WHICH THE PETITIONER WAS CONVICTED, WAS NOT A VIOLATION OF THE CONSTITUTIONAL PROHIBITION AGAINST EX POST FACTO LAWS AND A DENIAL OF EQUAL PROTECTION OF THE LAWS.

A R G U M E N T

Petitioner says he is the victim an ex post facto law because he was sentenced under a procedure not in effect when the crime occurred. He cites Calder v. Bull, 3 U.S. 386, 3 Dall 386 (1798).

Respondent concedes the rule of that case that a law is ex post facto if it changes the punishment and inflicts a greater punishment than that provided by law when the crime occurred. But that rule can not avail Petitioner. His offense was punishable by death when he did it. The new provision requiring one convicted of a capitol felony to serve twenty-five calendar years without parole could not validly apply to Petitioner, Lee v. State, 294 So.2d 305 at 307 (Fla. 1974), but the death penalty could, Miller v. State, 332 So.2d 65 at 67 (Fla. 1967).

Petitioner counters by alleging that the jury recommendation to mercy in his case would have produced a life sentence under the old procedure. This is speculation on his part, because his jury would not have had the benefit of the aggravation-mitigation hearing provided by Section 921.141, Fla.Stat., or the instructions of the Court. It is impossible to say what his jury would have recommended under the old procedure, but it is clear that the old procedure could not have been applied to Petitioner because it did not pass constitutional muster under Furman v. Georgia, 408 U.S. 238 (1972). The majority opinions in Furman are replete with references to the unconstitutionality of death sentences imposed under statutory arrangements providing unbridled discretion to judge

or jury. Surely Petitioner does not contend he had the right to be sentenced under an unconstitutional procedure.

Unless changes in procedure affect substantive rights they may be applied to prior offenses. See Beazell v. Ohio, 269 U.S. 165 (1925), where the change resulted in joint trial for codefendants, and Malloy v. South Carolina, 237 U.S. 180 (1915), where the method of execution of the death penalty changed. In James v. Twomey, 466 F.2d 718 at 721 (7th Cir. 1972), the court rejected the notion that a change from jury to judge in determining punishment would be ex post facto, saying:

> "Petitioner also contends that since the law in Illinois was changed to petitioner's substantial disadvantage after the commission of the offense, it is an ex post facto law, prohibited by Article I, Section 10 of the United States Constitution. Within the context of this case, it is certainly not clear that the statute as changed, even absent the 'savings clause,' made more onerous the punishment to which a defendant found guilty of rape would be exposed. Under the old code, if defendant were found guilty in a trial by jury, the jury would fix a term of imprisonment which could extend from one year to life. Under the new code the trial judge is given the responsibility of fixing an indefinite term of imprisonment, the minimum term being no less than one year, and the maximum being life. This is certainly distinguishable from the situation encountered in Lindsey v. Washington, 301 U.S. 397 S.Ct. 797, 81 L.Ed. 1182 (1937), in which the newly enacted statute required that what was merely a maximum under the old statute be mandatory term with a possibility of parole* * *". at 721

See also Donald v. Jones, 445 F.2d 601 (5th Cir. 1971), cert. den. 404 U.S. 992.

It can not be said that Florida's new procedure reduces the possibility of mercy. In fact, it is enhanced. Where only the jury could grant mercy in the past, Petitioner had the possibilities of 1) a jury recommendation which though not binding can only be set aside on facts so clear no reasonable person could differ, Tedder v. State, 322 So.2d 908 (Fla. 1975), 2) mercy from the trial Judge and 3) reduction of

sentence in the Supreme Court. That his case did not qualify was simply due to the heinous nature of what he did, as this Court recognized in Proffitt v. Florida, ___ U.S. ___, 49 L.Ed. 2d 913 (1976), Footnote 12 at 925.

Undoubtedly, Florida could have made the jury recommendation binding, as did Georgia (approved in Gregg v. Georgia, ___ U.S. ___ 49 L.Ed.2d 859 (1976). Petitioner would have been better off, but others, like Rudolph Zadnick (see Respondent's Appendix A) would have suffered. The important fact is that Petitioner was processed under a procedure upheld by this Court in Proffitt. It is the procedure which was in effect when he stood trial. It is respectfully submitted that Petitioner was entitled to no more. In Gibson v. Mississippi, 152 U.S. 565 at 590 (1896), this Court said:

> "* * * The inhibitation upon the passage of ex post facto laws does not give a criminal a right to be tried, in all respects, by the law in force when the crime charged was committed. The mode of trial is always under legislative control, subject only to the condition that the legislature may not, under the guise of establishing modes or procedure and prescribing remedies, violate the accepted principles that protect an accused person against ex post facto enactments* * *." at 591

To summarize, Petitioner's theory that his sentencing procedure was an ex post facto application is without merit. Only the procedure changed, not the punishment imposable. Accordingly, despite all of Petitioner's speculations about what might have happened under other procedure, there was no ex post facto violation.

Petitioner's equal protection argument that there may have been other defendants worthy of the death penalty who escaped their just rewards was before this Court in Proffitt, and was rejected, 49 L.Ed.2d at 924 and Footnote 16 at 927. Respondent will simply note that Petitioner and Rudolph Lee are not the only pre-Furman offenders still subject to the death penalty. The Miller of Miller v. State, supra, is another, and others are still working their way through the Florida Courts.

II.

WHETHER THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING THE PETITIONER'S TRIAL DOES NOT SHOW INHERENT PREJUDICE IN THE PRE-TRIAL SETTING AND JURY SELECTION PROCESS TO THE EXTENT THAT THE PETITIONER WAS DENIED DUE PROCESS OF LAW.

Respondent relies on this Court's recent decision in Murphy v. Florida, 421 U.S. 794 (1975), where this Court stated:

> "The constitutional standard of fairness requires that a defendant have 'a panel of impartial, 'indifferent' jurors.' Irvin v. Dowd, 366 US, at 722, 6 L Ed 2d 751, 81 S Ct 1639. Qualified however, be totally ignorant of the facts and issues involved.
>
> > 'To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.' Id., at 723, 6 L Ed 2d 751, 81 S Ct 1639." at 799-800

The publicity on Murphy contained highly prejudical material about unrelated offenses and convictions. Petitioner has not and can not show what his publicity contained with a capacity to prejudice him which approaches that on Murphy.

Murphy's trial Judge did nothing to insulate prospective jurors from news coverage, or to limit discussion among prospective jurors (see 421 US at 803-804). Petitioner's trial Judge entered an order March 12, 1974, prohibiting attorneys, witnesses and court personnel from releasing further statements about the case.(Petition p. 9) He instructed prospective jurors not to discuss the case (Respondent's Appendix B). Trial jurors were instructed repeatedly not to discuss the case and to avoid media accounts (see e.g., Respondent's Appendix C). When the trial began, the jury was sequestered (Respondent's Appendix D).

Petitioner had thirty-two peremptory challenges available. When the jury was accepted he had five remaining. This alone demonstrates that he did not encounter that degree of hostility which would make it impossible to select a fair jury. The voir dire bears this out (Respondent's Appendix E). Of the eighty-eight prospective jurors examined (including selection of alternate jurors), fifteen had never heard of Petitioner or his case. Twenty-two more had heard of him, but had formed no opinion. Twelve had heard enough to form an opinion which they thought could be set aside. Only twenty-four, less than one-third, expressed any great difficulty in setting aside the opinion that had formed from what they heard.

By Respondent's count, of the eighty-eight prospective jurors, the defense excused twenty-seven, and the State excused nineteen. Of the twenty-five excused for cause, four were for hardship reasons and two were excused under Witherspoon v. Illinois, 391 U.S 510 (1968) for fixed views on the death penalty. Thus, only nineteen were excused for prejudice against Petitioner, one based not on the media, but on personal knowledge, and some if not all based in part on the prejudice inherent in the charges, prejudice which could not have been avoided wherever the case was tried.

Comparing Murphy again, all seventy-eight of his prospective jurors had heard of him. Twenty were excused for cause for having prejudged him (421 US at 796). Just as some

of Murphy's prospective jurors thought him innocent based on what they had heard, some of Petitioner's prospective jurors thought him innocent because the bodies were not found.

In all aspects, Petitioner's case falls short of the showing made in Murphy. If a change of venue was not required for "Murph the Surf", it certainly was not mandatory for Petitioner.

CONCLUSION

It is respectfully submitted that this case presents no substantial federal question not already decided in Proffitt v. Florida, supra. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

ROBERT L. SHEVIN
Attorney General

By_____
CHARLES W. MUSGROVE
Assistant Attorney General

THE CAPITOL
Tallahassee, FL 32304

COUNSEL FOR RESPONDENT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response in Opposition to Petition for Writ of Certiorari to the Supreme Court of Florida has been furnished Honorable Louis O. Frost, Jr., Public Defender, Fourth Judicial Circuit, 221 Duval County Courthouse, Jacksonville, FL 32202, via Mail, this 29th day of September, 1976.

CHARLES W. MUSGROVE
Assistant Attorney General

OF COUNSEL FOR RESPONDENT

APPENDICES

84. 96 RECORDED
Dec 2 3 27 PM '74
OR 2538 PG 326

IN THE Circuit COURT
OF THE NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NUMBER CR74-1866

STATE OF FLORIDA,

Plaintiff,

-vs-

Rudolph Zadnik

Defendant.

FILED IN OPEN COURT
THIS 27 DAY OF Nov. 19 74
R. P. Kirkland, Clerk
BY Suzanne Hampton

JUDGMENT AND SENTENCE

You Rudolph Zadnik, being now before the Court, attended by your attorney, James Valerino, and you having (1) been tried and found guilty of ~~(2) pleaded guilty to (3) plead of nolo contendere to~~ First Degree Murder - Count One

the Court Adjudges that you are guilty of said offense, and it is the Sentence of the Law and the Judgment of the Court that you Rudolph Zadnik, be committed to the custody of the (1) Florida Division of Corrections ~~(2) Orange County Correctional Facility (3) Orange County Jail~~ to be imprisoned at Hard Labor for ~~a term of~~ the remainder of your natural life with credit for time previously served

and you are further Ordered to pay a fine and cost in the amount of $ 200.

DONE and ADJUDGED in open Court at Orlando, Orange County, Florida this the 27th day of November, 19 74, pursuant to Rules 3.670 and 3.700 RCrP.

STATE OF FLORIDA, COUNTY OF ORANGE I HEREBY CERTIFY, that the above and foregoing is a true copy of the original filed in this office. RUDOLPH P. KIRKLAND, Clerk Circuit Court

Dated 9/24/76 By Sandra Mayo D.C.

Peter W. Dubensen
Judge

(Fingerprints, if required by Sec. 30.31 Florida Statutes)

4 FINGERS TAKEN SIMULTANEOUSLY	LEFT THUMB	RIGHT THUMB	4 FINGERS TAKEN SIMULTANEOUSLY
LEFT HAND			RIGHT HAND

I hereby certify that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant Rudolph Zadnik, and that they were placed thereon by said defendant in my presence, in open court, this the 27th day of November, 19 74, pursuant to Sec. 30.31.

RECORDED & RECORD VERIFIED

County Comptroller, Orange Co., Fla.

Peter W. Dubensen
Judge

88-11 (3/73)

APPENDIX A

Life to run consecutive to 11-2774

Dec 2 3 27 PM '74
OR 2586 PG 927

IN THE Circuit COURT
OF THE NINTH JUDICIAL CIRCUIT IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NUMBER CR74-1866

STATE OF FLORIDA,

Plaintiff,

vs.

Rudolph Zadnik

Defendant.

FILED IN OPEN COURT
THIS 27 DAY OF Nov, 1974
R. P. Kirkland, Clerk
BY Virginia McLaughlin

JUDGMENT AND SENTENCE

You Rudolph Zadnik, being now before the Court, attended by your attorney, James Valiveno, and you having (1) been tried and found guilty of ~~(2) pleaded guilty to (2) pleaded nolo contendere to~~ First Degree Murder - Count Two

the Court Adjudges that you are guilty of said offense, and it is the Sentence of the Law and the Judgment of the Court that you Rudolph Zadnik, be committed to the custody of the (1) Florida Division of Corrections ~~(2) Orange County Correctional Facility (3) Orange County Jail~~ to be imprisoned at Hard Labor for ~~a term of~~ the remainder of your natural life consecutive with the sentence imposed in Count One

and you are further Ordered to pay a fine and cost in the amount of $ 200.

DONE and ADJUDGED in open Court at Orlando, Orange County, Florida this the 27th day of November, 19 74, pursuant to Rules 3.670 and 3.700 RCrP.

STATE OF FLORIDA, COUNTY OF ORANGE I HEREBY CERTIFY, that the above and foregoing is a true copy of the original filed in this office. [illegible], Clerk Circuit Court

Dated 9/24/76 By Sandra Meyer D.C.

Peter Mac Manus
Judge

(Fingerprints, if required by Sec. 30.31 Florida Statutes)

4 FINGERS TAKEN SIMULTANEOUSLY	LEFT THUMB	RIGHT THUMB	4 FINGERS TAKEN SIMULTANEOUSLY
LEFT HAND			RIGHT HAND

I hereby certify that the above and foregoing fingerprints on this judgment are the fingerprints of the defendant Rudolph Zadnik, and that they were placed thereon by said defendant in my presence, in open court, this the 27th day of November, 19 74, pursuant to Sec. 30.31.

RECORDED & RECORD VERIFIED

County Comptroller, Orange Co., Fla.

Peter Mac Manus
Judge

32-11 (3/73)

2

9/12 to 2 C.O. Orig. to Pris. 11/27/74

Pet. for Writ of Habeas Corpus filed 11-22-74

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA.

INDICTMENT NO. 74-1866

STATE OF FLORIDA,

Plaintiff,

vs.

RUDOLPH ZADNIK,

Defendant.

FILED IN OPEN COURT
THIS 27 DAY OF Nov, 1974
R. P. Kirkland, Clerk
BY Virginia Lee Tompkins D.C.

ADVISORY SENTENCE (AS TO COUNT I)

We, the Jury, vote as follows:

12 recommend life imprisonment

0 recommend punishment by death

Dated at Orlando, Orange County, Florida this 27 day of

Nov, 1974.

FOREMAN

STATE OF FLORIDA, COUNTY OF ORANGE I HEREBY CERTIFY,
that the above and foregoing is a true copy of the original filed in this office.
R. P. KIRKLAND, Clerk Circuit Court
Dated 9/24/76 By Sandra Maya D.C.

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA.

INDICTMENT NO. 74-1866

STATE OF FLORIDA,

Plaintiff,

vs.

RUDOLPH ZADNIK,

Defendant.

FILED IN OPEN COURT
THIS 27 DAY OF Nov, 1974
R. P. Kirkland, Clerk
BY Virginia Lee Tompkins D.C.

ADVISORY SENTENCE (AS TO COUNT II)

We, the Jury, vote as follows:

0 recommend life imprisonment

12 recommend punishment by death

Dated at Orlando, Orange County, Florida this 27 day of

Nov, 1974.

FOREMAN

STATE OF FLORIDA, COUNTY OF ORANGE I HEREBY CERTIFY,
that the above and foregoing is a true copy of the original filed in this office.
R. P. KIRKLAND, Clerk Circuit Court
Dated 9/24/76 By Sandra Maya D.C.

venire.)

THE COURT: Now, Ladies and Gentlemen of the jury panel, I know that you must feel as though we are playing musical chairs with you. We started out in one Courtroom this morning and now we're in another, and before the day is over you will be in another Courtroom but the reason for that is this: While the jurors are being selected they will sit in this jury box here. Now, while the attorneys are questioning the jurors, those of you who are not being questioned will be next door in Courtroom Number 4. The reason for that need not be explained at this time, but you will not hear what is being said or any of the answers which are given during the jury selection. Courtroom Number 4 is next door. While you are in that Courtroom you may be very informal. The Courtroom itself has restroom facilities and you may discuss the weather, golf, baseball,

anything you choose except you will not discuss this case in any manner. Now, until such time as you are called into this Courtroom -- as I said before, you will be at ease, very informal; there will be a bailiff with you. If you have any questions, needs or requirements, you ask him; and, from time to time, since you are not allowed to smoke in the Courtroom, you may step out into the hallway or you may go back into the jury room in the back of the Courtroom where the restroom facilities are and there's a sitting room there. You avail yourselves of those facilities. If all of you at this time will please follow Mr. Highsmith at the door to Courtroom Number 4.

(Jury venire absent)

THE COURT: All right, let the record show that the jury panel is outside of this Courtroom and out of the hearing of this Court; that those present are Mr. Shorstein, Mr. Southwood and

BEST COPY AVAILABLE

speculate on what might have occurred, had the objection not been sustained and you must not speculate as to what a witness might have said, had the witness been permitted to answer the question.

You are instructed not to visit the scene of the alleged crime, should it be necessary for you to view the scene, you will be taken there as a group, under the supervision of the Court.

In the course of this trial, the Court may take one or more recesses, during which recess you will be permitted to separate and go about your personal affairs.

Now, during these recesses, you will not discuss this case with anyone, nor will you permit anyone to say anything to you, or in your presence about this case.

If, anyone, attempts to say anything to you, or in your presence about this case, then you tell them that you are on the Jury trying this case, and ask them to stop, if they persist, then leave them at once and report the matter to the Court immediately upon your return to Court.

SUCH CONDUCT ON THEIR PART WOULD BE CONTEMPT OF COURT - TO BE PUNISHED AS SUCH.

You are instructed not to read, listen to, nor watch and news reports of this trial. The evidence in this case comes to you only in the courtroom, and it must be considered by you free from any outside influence.

Now, the reason for this is that, news reports are NOT limited to the evidence, and may contain material which is of no concern, whatsoever, to you, but which might tend to influence you one way or the other.

This case must be tried solely upon the evidence produced in the Courtroom in the presence of :

"I understand you're serving on the jury, let me tell you so and so, and so and so." We don't want that to happen.

If somebody might learn you are serving on the jury, and I don't know that they might, and they might want to call you about the case, should anyone do that, you advise them you cannot discuss it and terminate the conversation about it.

Now, in a moment we will know what time we can have the Courtroom on Monday.

I ask you to be back on Monday with the overnight bag and other possessions or whatever, and bring it with you.

We will have a city bus which was chartered exclusively for your use during this trial. You will leave here and go out in a group and get on the bus. The driver will take you to and from the hotel during the course of the trial.

All right, we use this big Courtroom for the Judges to qualify about four

hundred jurors each Monday. This is the only one available with the twelve man jury box. Judge Cox said it won't be available until about 10:30 Monday. I admonish you or instruct you to be back Monday morning at 10:30. Bring your bags with you. When you come in the Courtroom go directly to your jury room. Take your bags back there. Then you will be staying at the Hilton Hotel after that.

Now, there are television sets in your hotel rooms. Now, my bailiffs will be with you. They will see that you don't watch news programs. You will be out of touch with the news. They will see that you don't look at news programs. You will be allowed to read anything but the bailiffs will see you don't read articles about the case. The rooms have TV but no radio. We won't be concerned about that. I suggest you not take a radio with you. If radios are in the rooms, the bailiffs will see you don't listen to anything

about the case.

While staying in the hotel the members of your family or those that you need to be in contact with, you may give them your phone number. For example, maybe an emergency will come up. The family might have to reach you.

The bailiff will see that the operator at the switchboard has that. You will be able to call out. When you call out, you won't discuss the case in any way.

You will only receive those calls from immediate members of the family or somebody that it is necessary to contact you in case of an emergency.

Mr. Southwood and Mr. Frost, and Mr. Shorstein, are there any further admonitions that you would like to request?

MR. SHORSTEIN: The State has none.

MR. SOUTHWOOD: We have none.

THE COURT: Mr. Frost?

MR. FROST: No, sir.

THE COURT: With sincere apologies for

SUMMARY OF JURY SELECTION

The confusion as to how jurors were interviewed arises from whether the selection of alternate jurors is counted. The jury of twelve was selected after seventy-eight were interviewed. Ten more were interviewed to get three alternates.

To spare this Court from reading 1400 pages of jury selection, this narrative is presented. By Respondent's count, of eighty-eight interviewed, fifteen were chosen, and two were left over, unchallenged, when the jury was complete. The defense excused twenty-seven peremptorily, and the State excused nineteen. Twenty-five were excused for cause, four of those for hardship reasons: Basil Pritchard, George Davis, Herbert Roziers and Lillian Presser, and two others for unwillingness to vote guilty in a death case: Robert Wollitz, Grace Kelly.

In the following summary those who served as jurors or alternates are in bold print.

The following fifteen had not heard of the case before trial: RUFUS WILLIAMS*, MARY ALEXANDER*, Cheryl Price, Belinda Gary, Juliette Redding, Joseph Boyle, MICHAEL GLADIN*, James Wright, Georgia Hart, Minnie Betha, Donald Allen, Ann Young, George Davis, Josephine Harris, Herbert Roziers.

The following twenty-two had heard of the case, but had not formed an opinion: Donald Vanek, Basil Pritchard, Dale Charpentier, WILLIS VANAME*, THOMAS YOUNGBLOOD*, Audrey Towery, Jeanette Vurnakes, Clark Powell, James Towler, Nellie Price, James Tull, Patty Jo Lawton, Florian Price, Lois Geary, Helen Smith, Judith Chesser, Grace Kelly, BETTY PRICE*, Lillian Presser, Minnie Hancock, Nathaniel Purdy, RAMONA GREEN*.

The following twelve had formed an opinion, but thought they could set it aside: Garwood Hall, George Vonstelle,

Robert Wollitz, Vernon Chaussee, Wayne Steed, Lawrence Worten, TERESA WRIGHT*, SUSAN RACKLEY*, JACQUELYNN FERNANDEZ*, WALTER SMITH*, MARGUERITE HALL*, Thomas Pritchard.

The following twenty-four expressed lesser or greater degrees of difficulty is setting aside their opinions: Arvey Bennett, Ted Szymanski, Vivian Chilcott, Larry Johnson, Robert Williams, John Adams, Edward Lehman, Jean Price, Betty Lewis, Bonnie Speth, Joseph Haywood, Sylvia Wiles, Archie Alderman, Mary Taggart, William Davies, Sara Lewis, Wayne Guthrie, Judy Lepore, Willie Caudill, James Pierce, Nancy Adams, Carl Wilson, Barbara Torrent, Nancy Johnson.

Two indicated they had formed an opinion of innocence based on absence of the bodies: Michael Powers, James Lewis. Another, James Tillman, hinted at the same thing by answering that he had not formed an opinion of guilt. Four others indicated they would have trouble convicting without the bodies. Ann Young, Georgie Davis, Walter Smith, Nancy Johnson.

Some were prejudiced, not by the media, but by the nature of the case: Mary Alexander, Belinda Gary, Helen Smith, Vernon Chaussee, Marguerite Hall, Robert Williams, Betty Lewis, Sylvia Wiles, Sara Lewis. One was prejudiced based on her own personal knowledge, Francis Raymond.